

MARY ANN SMITH
Deputy Commissioner
MIRANDA LEKANDER
Assistant Chief Counsel
KENNY V. NGUYEN (State Bar No. 233385)
Senior Counsel
Department of Business Oversight
1515 K Street, Suite 200
Sacramento, California 95814
Telephone: (916) 322-8782
Facsimile: (916) 445-6985
Attorneys for Complainant

BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
OF THE STATE OF CALIFORNIA

In the Matter of:)	NMLS ID. 397945
)	
THE COMMISSIONER OF BUSINESS)	SETTLEMENT AGREEMENT
OVERSIGHT,)	
)	
Complainant,)	
)	
v.)	
)	
WILLIAM JOHN MICKLEY, JR.,)	
)	
<u>Respondent.</u>)	

This Settlement Agreement (Agreement) is entered into between Respondent William John Mickley, Jr. (Mickley), on one hand, and Complainant, the Commissioner of Business Oversight (Commissioner), on the other hand, (collectively, the Parties) and is made with respect to the following facts:

RECITALS

A. On January 18, 2011, Mickley filed an application for a mortgage loan originator (MLO) license with the Commissioner pursuant to the California Residential Mortgage Lending Act (CRMLA) (Fin. Code, § 50000 et seq.). The application was for employment as a MLO, and was submitted to the Commissioner by completing and filing a Form MU4 through the Nationwide Mortgage Licensing System & Registry (NMLS).

1 B. In submitting his application, Mickley was required to sign an oath and attestation
2 agreeing “to keep the information contained in this [MU4] form current and to file accurate
3 supplementary information on a timely basis....”

4 C. Based on the information provided in his application and his agreement to keep the
5 information current and to timely supplement the information, Mickley was issued an MLO license
6 on March 3, 2011.

7 D. As a prerequisite to having the MLO license, Mickley was required to have a
8 sponsoring company, which he satisfied through his then-employer, Mount Olympus Mortgage
9 Company, Inc. (MOMCo).

10 E. In early June 2014, Mickley was recruited to join a different employer - a competitor
11 of MOMCo - Guaranteed Rate, Inc. (Guaranteed). In the course of his recruitment, Mickley
12 surreptitiously and without MOMCo’s knowledge or consent, arranged to transfer or abetted in
13 transferring MOMCo’s confidential customer loan information to Guaranteed. Such actions violated
14 MOMCo’s written policies, which Mickley had signed and agreed to abide by as a condition of
15 employment.

16 F. In addition, Mickley failed to disclose to MOMCo’s customers that their loans were
17 being transferred to Guaranteed without their consent or knowledge. For example, on or about June
18 3, 2014, Mickley did not disclose to a customer that his application was no longer being processed by
19 MOMCo. Instead, Mickley falsely assured the customer that Guaranteed was merely the “rate lock
20 department,” leaving the impression that MOMCo was still processing the loan.

21 G. On or about June 13, 2014, MOMCo terminated Mickley’s employment based in part
22 on allegations that he was misappropriating MOMCo’s confidential and proprietary information, and
23 diverting customers from MOMCo to Guaranteed. MOMCo notified DBO that same day by
24 submitting an entry into the NMLS that it had terminated or “discharged” Mickley from its
25 employment and that it would no longer be his sponsoring company.

26 H. On June 27, 2014 Mickley filed an amended MU4 application through the NMLS
27 wherein he updated his “current employer” to remove MOMCo.

28 I. Despite amending his application, Mickley continued to answer “no” to Termination

1 Disclosure question (Q)(2) on the MU4 application, which specifically asked:

2 (Q) Have you ever voluntarily resigned, been discharged, or permitted to resign after
3 allegations were made that accused you of: (2) fraud, dishonesty, theft, or the wrongful taking
4 of property?

5 Mickley attested under oath to the truth and completeness of this statement, despite notification that
6 MOMCo had terminated his employment based in part on allegations of theft of its confidential and
7 proprietary information.

8 J. Mickley subsequently submitted at least 17 additional amended MU4 applications
9 through NMLS from 2014 to 2017. In each of the 17 amended MU4 applications, Mickley continued
10 to fail to change his response to Termination Disclosure question (Q)(2) to disclose that he was
11 discharged from MOMCo after allegations of fraud, dishonesty, theft, or the wrongful taking of
12 property were made against him.

13 K. On or about June 19, 2014, MOMCo initiated a civil lawsuit against Mickley in
14 Orange County Superior Court. The complaint in the lawsuit alleged that Mickley, working with
15 other MOMCo employees “conspired with Guaranteed, during the course of several months, to carry
16 out a scheme to defraud MOMCo of its confidential and proprietary information” and
17 “misappropriated MOMCo’s confidential and proprietary information and directed MOMCo
18 customers to Guaranteed in violation of their respective agreements with MOMCo, as well as
19 California common law and statutory laws.” Furthermore, the complaint included a prayer for relief
20 seeking an “injunction restraining and enjoining” Mickley and others “from disclosing or utilizing
21 any confidential, proprietary and trade secret protected information obtained from MOMCo
22 including, but not limited to, the identity of MOMCo’s customers and their preferences for
23 MOMCo’s loan origination services.” In other words, the lawsuit brought by MOMCo sought
24 injunctive relief that prohibited Mickley from engaging in lending services for borrowers whose files
25 and identities Mickley had stolen from MOMCo and given to Guaranteed.

26 L. Mickley was personally served with the summons and complaint on or about June 25,
27 2014. Despite notification that he was named in a civil action related to financial services where the
28 plaintiff was seeking to enjoin him in connection with financial services-related activity, Mickley
never disclosed this fact to the Commissioner. Mickley amended his MU4 application at least 17

times after being served with the summons and complaint, but did not change his answer from “no” to “yes” in response to Civil Disclosure question (J)(1) and (2) on the MU4 application, which specifically asked:

(J)(2) Is there a pending financial services-related civil action in which you are named for any alleged violation described in (J)(1)?

(J)(1) Has any domestic or foreign court ever: (a) enjoined you in connection with any financial services-related activity?

M. From the time he was served with the summons and complaint until he was dismissed from the lawsuit on February 3, 2016, Mickley did not amend his MU4 application to disclose the lawsuit.

N. Because Mickley withheld information and failed to demonstrate character, failed to demonstrate that he can “command the confidence of the community” or that he “will operate honestly, fairly, and efficiently” with respect to his job as a MLO, the Commissioner issued Mickley a Notice of Intention to revoke his MLO license under Financial Code section 50513, Accusation, and accompanying documents (Accusation) on October 31, 2017. A true and correct copy of the Accusation is attached and incorporated herein as Exhibit A.

O. Mickley timely requested an administrative hearing in regard to the Accusation, which is set for trial before the Office of Administrative Hearings from June 25-27, 2018.

L. The Commissioner finds that entering into this Settlement Agreement is in the public interest and consistent with the purposes fairly intended by the policy and provisions of the CRMLA.

NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set forth herein, the Parties agree as follows:

TERMS AND CONDITIONS

1. Purpose. It is the intention and desire of the Parties to resolve this matter without the necessity of a hearing or other litigation for the purpose of judicial economy and expediency, and to avoid the expense of a hearing, and possible further court proceedings.

2. Waiver of Hearing Rights. Mickley agrees that this Settlement Agreement shall have the effect of withdrawing his request for an administrative hearing on the matter set forth herein. Mickley acknowledges his right to an administrative hearing under the CRMLA in connection with

1 the Accusation set forth above, and hereby waives such right to hearing, and to any reconsideration,
2 appeal, or other rights which may be afforded under the CRMLA; the Administrative Procedure Act
3 (APA) (Govt. Code, § 11370 et seq.); the Code of Civil Procedure (CCP) (Code of Civ. Proc., § 1 et
4 seq.); or any other provision of law in connection with these matters.

5 3. Dismissal of Notice of Intention. Except as otherwise provided herein, the Parties
6 acknowledge that this Settlement Agreement shall have the effect of dismissing the Notice of
7 Intention cited in Paragraph N. The dismissal shall become effective on the Effective Date of this
8 Settlement Agreement, as such date is defined in Paragraph 20.

9 4. Bar from Applying for Renewal of MLO License. For a period of one year (12
10 months) immediately following the Effective Date of this Settlement Agreement, Mickley agrees that
11 he shall not apply to renew his MLO License with the Department of Business Oversight. If any
12 application for renewal of an MLO License is made with the Department of Business Oversight
13 during this one-year period, it shall be summarily denied, without right to appeal or challenge the
14 decision under the CRMLA.

15 5. Administrative Penalty. In consideration of the dismissal of the Notice of Intention
16 effected by Paragraph 3, above, Mickley agrees to pay an administrative penalty to the Commissioner
17 in the amount of \$5,000.00 (Administrative Penalty), which shall be due within 10 days of the
18 Effective Date of this Settlement Agreement. Payment in the form of a cashier's check shall be made
19 payable to "The Department of Business Oversight" and mailed to the Commissioner's agent
20 specified in Paragraph 19, below. In the event the payment due date falls on a weekend or holiday,
21 the payment shall be due the next business day.

22 6. Supplementing MU4 Application. Mickley agrees, immediately upon signing this
23 Settlement Agreement, to supplement his MU4 application to disclose that he was named in a lawsuit
24 in 2014 in which an injunction was sought against him related to financial services-related activity,
25 and that he was terminated from Mount Olympus Mortgage Company, Inc. after allegations of theft
26 were made against him.

27 7. Commissioner's Remedy for Breach. Mickley agrees that if the Commissioner makes
28 a finding that Mickley has violated or is violating any provision of this Settlement Agreement,

1 including Paragraphs 4 through 6, then the Commissioner may, in her sole discretion, issue to
2 Mickley a final order revoking his MLO license. Mickley waives all notice and hearing rights to
3 contest any revocation order issued under this provision, which may be afforded under the CRMLA,
4 the APA, the CCP, or any other provision of law in connection with these matters.

5 8. Effect Upon Future Proceedings. If Mickley applies for any license, permit or
6 qualification under the Commissioner's current or future jurisdiction, or is the subject of any future
7 action by the Commissioner to enforce this Settlement Agreement, then the subject matter hereof
8 shall be admitted for the purpose of such application(s) or enforcement proceedings(s).

9 9. Agreement Coverage. The Parties hereby acknowledge that this Settlement
10 Agreement is intended to constitute a full, final, and complete resolution of the matter set forth
11 herein.

12 10. Commissioner's Duties. The Parties further acknowledge and agree that nothing
13 contained in this Settlement Agreement shall operate to limit the Commissioner's ability to assist any
14 other agency (city, county, state or federal) with any prosecution (administrative, civil, or criminal)
15 brought by any such agency against Mickley or any other person based on any of the activities
16 alleged in this matter or otherwise.

17 11. Independent Legal Advice. Each of the Parties represents, warrants, and agrees that it
18 has received independent advice from their attorneys or representatives with respect to the
19 advisability of executing this Settlement Agreement.

20 12. Reliance. Each of the Parties represents, warrants, and agrees that in executing this
21 Settlement Agreement they have relied solely on the statements set forth herein and the advice of
22 their own counsel. Each of the Parties further represents, warrants, and agrees that in executing this
23 Settlement Agreement it has placed no reliance on any statement, representation, or promise of any
24 other party, or any other person or entity not expressly set forth in this Settlement Agreement, or on
25 the failure of any party or any other person or entity to make any statement, representation or
26 disclosure of anything whatsoever. The Parties have included this clause: (1) to preclude any claim
27 that any party was in any way fraudulently induced to execute this Settlement Agreement; and (2) to
28

preclude the introduction of parol evidence to vary, interpret, supplement, or contradict the terms of the Settlement Agreement.

13. Full Integration. This Settlement Agreement is the final written expression and the complete and exclusive statement of all agreements, conditions, promises, representations, and covenants between the Parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements, negotiations, representations, understandings, and discussions between and among the Parties, their respective representatives, and any other person or entity, with respect to the subject matter covered by the Settlement Agreement.

14. No Presumption from Drafting. In that the Parties have had an opportunity to draft, review, and edit the language of this Settlement Agreement, no presumption for or against any party arising out of drafting all or any part of this Settlement Agreement will be applied in any action relating to, connected to, or involving this Settlement Agreement. Accordingly, the Parties waive the benefit of Civil Code section 1654 and any successor or amended statute, providing that in cases of uncertainty, language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist.

15. Headings and Governing Law. The headings to the paragraphs of this Settlement Agreement are inserted for convenience only and will not be deemed a part hereof or affect the construction or interpretation of the provisions of the Settlement Agreement.

16. Voluntary Agreement. Mickley enters into this Settlement Agreement voluntarily and without coercion and acknowledges that no promises, threats, or assurances have been made by the Commissioner or any officer, or agent thereof, about this Settlement Agreement.

17. Waiver. The waiver of any provision of this Settlement Agreement shall not operate to waive any other provision set forth herein, and any waiver, amendment, or change to the terms of this Settlement Agreement must be in writing and signed by the Parties.

18. Counterparts. The Parties agree that this Settlement Agreement may be executed in one or more separate counterparts, each of which, when so executed, shall be deemed an original. A facsimile or scanned signature shall be deemed the same as an original signature. Such counterparts together constitute one document.

19. Capacity. Each signator hereto covenants that he or she possesses all necessary capacity and authority to sign and enter into this Settlement Agreement.

20. Effective Date. This Settlement Agreement shall become effective ("Effective Date") when executed by the Commissioner or her designee and transmitted by electronic mail to Mickley at william@lowcostrm.com and his counsel at juliegreenfield@cox.net.

21. Public Record. Mickley acknowledges that this Settlement Agreement and the Accusation are public records, and shall be posted on the Department of Business Oversight's public website. Mickley further understands and agrees to not make any statement or representation that is inconsistent with the Consent Order.

22. Notice. Any notices required under this Agreement shall be provided to each party at the following addresses:

William John Mickley, Jr.
8452 Sunkist Circle
Huntington Beach, California 92646

If to the Commissioner to:

Kenny V. Nguyen, Senior Counsel
Department of Business Oversight
1515 K Street, Suite 200
Sacramento, California 95814

Dated: 5/9/18

JAN LYNN OWEN
Commissioner of Business Oversight

By: _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: 4/30/18

By: _____
WILLIAM JOHN MICKLEY, JR.
an individual

Approved as to form: _____

JULIE GREENFIELD
Attorney for Respondent William John Mickley, Jr.